

**[ G.R. No. L-6305. October 25, 1954 ]**

**AGUSTIN GIL, PLAINTIFF AND APPELLANT, VS. ROSA S. TALAÑA, ET AL.,  
DEFENDANTS AND APPELLEES.**

**D E C I S I O N**

**JUGO, J.:**

The case was set for trial on July 18, 1951. Before that date the plaintiff had filed a motion for postponement for September, 1951. On July 18 the plaintiff and his counsel arrived fifteen minutes late at the trial and the case was dismissed by the court. One hour after the case had been called for trial, the attorney of the plaintiff filed a motion for reconsideration asking for its reinstatement. Said motion was denied in the following order:

**“ORDER”**

“This is a motion for reconsideration dated July 18, 1951, presented by counsel for the plaintiff, based on the ground that the failure of the plaintiff and his counsel to appear on time when this case was called for hearing the last time was due to some excusable negligence.

“It appears in said motion on the third paragraph that the counsel” for the plaintiff admits that ,he left the City of Pasay at 7:30 a.m., and therefore his failure to come to court on time is excusable. This could no longer be called excusable neglect. Said counsel should know that from Pasay City to Quiapo, if he should take the regular bus, it takes about 16 minutes to negotiate the distance and from Quiapo to the Rizal Provincial Capitol, where the

Court holds its session it takes from 35 to 40 minutes to negotiate that distance. If said counsel were to use a private car passing through Highway 54 from Pasay City to the provincial capitol, it will take from 14 to 17 minutes at a speed not to exceed 60 kilometers per hour to negotiate that distance if he uses any car of medium speed like the Chevrolet, the Ford or the Pontiac. And if counsel were to use a Buick or a Cadillac, the distance from the said provincial capitol to Pasay or from Pasay to the provincial capitol can be negotiated in not less than 12 minutes.

"In view of the foregoing, the motion for reconsideration dated July 16, 1951, is denied from the reason that the grounds alleged thereto are not sufficient to justify the failure of the plaintiff and his lawyer to appear on time in court when this case was last called for hearing.

*"It' is so ordered.*

"Pasig, Rizal, July 21, 1951.

(Sgd.) BIENVENIDO A. TAN  
*Judge"*

The plaintiff appealed to the Court of Appeals which certified the case to this Court for the reason that no questions of fact are raised.

It should be considered that the order dismissing the case does not say whether it is with or without prejudice and, consequently, it is equivalent to a dismissal with prejudice (section 3, Rule 30). In view of the fact that the plaintiff and his counsel were only about fifteen minutes late in arriving at the court, we believe that it constituted an abuse of discretion of the trial court to dismiss the case definitely. Sometimes a delay of a few minutes is unavoidable in trips such as that taken by the plaintiff in going to the court and it would be too drastic to make him suffer for such a short tardiness.

In view of the foregoing, the order of dismissal of the complaint is set aside and the case is ordered returned to the trial court for

further proceedings, without pronouncement as to costs. So ordered.

*Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion and Reyes, J. B, L., JJ., concur.*

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